

**A Badan Peguam Malaysia & Ors v Noor Dellhan bin Yahaya (in
the capacity as an Officer in Charge of Police District of Dang
Wangi) & Ors**

**B HIGH COURT (KUALA LUMPUR) — SUIT NO WA-21NCvC-113–10
OF 2022
GAN TECHIONG JC
20 MARCH 2025**

**C Tort — False imprisonment — Misfeasance in public office — Peaceful assembly
and march — Plaintiffs organised peaceful assembly at public carpark and march
to Parliament — Participants prohibited from marching and blocked by
D policemen — Whether defendants had acted in breach of Peaceful Assembly Act
2012 and Federal Constitution — Whether defendants' action in preventing
plaintiffs from marching to Parliament amounted to false imprisonment
— Whether defendants' action amounted to misfeasance in public office
— Peaceful Assembly Act 2012 ss 9 & 10**

**E The plaintiffs had organised a peaceful assembly and march to take place on
17 June 2022 which they named 'Walk for Judicial Independence' at the
Padang Merbok Public Carpark ('carpark'). The staff of the first plaintiff
attempted to deliver a notice pursuant to s 9(1) of the Peaceful Assembly Act
F 2012 ('the PAA') to the first defendant but the officers at the Dang Wangi
Police Station under the command of the first defendant refused to accept it on
the ground that the plaintiffs did not obtain the consent of Dewan Bandaraya
Kuala Lumpur ('DBKL') to use the proposed venue. The notice was
subsequently left at a counter in the police station. In a meeting with the first
G plaintiff's representatives, the first defendant informed them that their
proposed assembly at the carpark was allowed, but they would be prohibited
from marching to Parliament. On 16 June 2022, the plaintiffs received the first
defendant's letter dated 15 June 2022 that formally imposing conditions ie no
procession permitted per reg 6(1) of the Prevention and Control of Infectious
H Diseases (Measures Within Infected Local Areas) (National Recovery Plan)
(Transition Phase to Endemic) Regulations 2022 ('the Regulations') and no
acts causing nuisance/annoyance/injury. On 17 June 2022, the plaintiffs,
members of the first plaintiff and some members of the public gathered at the
carpark for the assembly. When the plaintiffs attempted to march to
I Parliament, the policemen under the command of the second defendant
formed a human chain and blocked all the participants at the carpark. During
the assembly, the second defendant informed the participants that they were
not allowed to march due to conditions imposed by the first defendant
under s 15 of the PAA. The second plaintiff then called the Deputy Minister of**

Law ('Deputy Minister') and informed her that the participants were unable to march to Parliament. The Deputy Minister arrived five minutes later to receive the first plaintiff's memorandum on behalf of the Prime Minister. After the memorandum handed over, the participants of the assembly dispersed peacefully. The plaintiffs filed this suit pleading, *inter alia*, violation of their rights under the PAA and the Federal Constitution, tort of false imprisonment and misfeasance in public office.

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Held:

- (1) Even though under the PAA, no permit was required from the police for an assembly to be held, and only a notification was required to be given, such notification would be valid if and only if it complied with s 10 of the PAA. Section 10(c) contained a requirement for the s 9 notification to be accompanied by a copy of the consent of the owner or occupier of the place of assembly. Pursuant to s 63 of the Local Government Act 1976, DBKL had the general control and care of the carpark and thus DBKL was the occupier of the carpark for the purpose of s 10(c) of the PAA. Even though the carpark was open to the public, consent from DBKL was required due to: (a) the carpark was not to be used for its designated purpose as a carpark but as premises for an event organised by the first plaintiff; and (b) the term 'assembly' as defined in s 3 of the PAA specifically referred to an intentional and temporary assembly of a number of persons in a 'public place' while s 11 made it mandatory for the consent of the owner or occupier of the place of assembly to be obtained. A s 9(1) notification must be a notification that complied with the requirements of s 10 of the PAA. Thus, the first defendant did not err in holding on to the s 9(1) notification — which was short of a consent letter from DBKL — and requesting from the first plaintiff the submission of a consent letter. The plaintiffs complied with s 10 of the PAA only on 14 June 2022 when they submitted DBKL's consent letter to the office of the first defendant. Since the first defendant's letter dated 15 June 2022 was issued to the plaintiffs within three days of all relevant s 10 notification documents being submitted to make the s 9(1) notification complete, there was no delay on the part of the first defendant in complying with s 14(1) of the PAA by issuing his letter on 15 June 2022 (see paras 45, 47–51 & 53).
- (2) The manner in which the Director General of Health ('DGH') regulated permitted activities was through a negative list of prohibited activities in their standard operating procedure ('SOP') published on the website of the Majlis Keselamatan Negara. Further, the DGH had issued a SOP to drop all the negative list of prohibited activities, which took effect from 15 May 2022, to allow the public to gather outdoors without facemasks. The outdoor activities of the assembly and march planned by the plaintiffs were not activities prohibited as at 17 June 2022. Therefore, the

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- A first defendant, in his capacity as the OCPD of Dang Wangi Police District, had acted ultra vires in imposing a prohibition of the march by relying on reg 6(1) of the Regulations — as stated in his letter of 15 June 2022 absolutely prohibiting a march from being held by the first plaintiff (see paras 54–55).
- B (3) There was no evidence of any of the participants requesting to be allowed to leave the assembly to go elsewhere but was restrained from doing so. The participants were able to move about freely within the carpark while the second defendant was continuing his efforts to negotiate with the plaintiffs. After the second plaintiff handed the memorandum to the Deputy Minister who gave a speech apologising to the participants, the participants of the assembly dispersed peacefully without any hindrance by the second defendant and/or his subordinates. During the short period when the participants of the assembly were blocked by the police from marching to Parliament before the arrival of the Deputy Minister, their movement was only partially restricted. Partial restriction of freedom of movement was not imprisonment and the plaintiffs' prayer for a declaration of false imprisonment was dismissed (see paras 65–67).
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- E (4) The first defendant's reliance on reg 6(1) of the Regulations was due to his misinterpretation of the law. Given that the first defendant had little time to consult the Attorney-General Chambers within that short span of time, the first defendant did not commit any misfeasance in public office in imposing that prohibition in his letter and/or in enforcing the prohibition (see paras 68–69).
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- (5) The plaintiffs had in fact achieved almost the whole objective of the assembly on 17 June 2022 sans the march. Therefore, in fairness, there should be no award for special damages. Nominal damages of RM1 were awarded to the first plaintiff (see paras 72 & 74).

G **[Bahasa Malaysia summary]**

- H Plaintiff-plaintiff telah menganjurkan satu perhimpunan aman dan perarakan pada 17 Jun 2022 yang dinamakan 'Walk for Judicial Independence' di Tempat Letak Kereta Awam Padang Merbok ('tempat letak kereta'). Kakitangan plaintiff pertama cuba menyerahkan notis menurut s 9(1) Akta Perhimpunan Aman 2012 ('APA') kepada defendan pertama tetapi pegawai-pegawai di Balai Polis Dang Wangi di bawah arahan defendan pertama enggan menerimanya atas alasan plaintiff-plaintiff tidak mendapatkan kebenaran Dewan Bandaraya Kuala Lumpur ('DBKL') untuk menggunakan tempat yang dicadangkan.
- I Notis itu kemudiannya ditinggalkan di kaunter balai polis. Dalam satu mesyuarat dengan wakil-wakil plaintiff pertama, defendan pertama memaklumkan kepada mereka bahawa perhimpunan yang dicadangkan di tempat letak kereta dibenarkan, tetapi mereka dilarang daripada berarak ke Parlimen. Pada 16 Jun 2022, plaintiff-plaintiff menerima surat defendan

pertama bertarikh 15 Jun 2022 yang secara rasmi mengenakan syarat-syarat iaitu tiada perarakan dibenarkan mengikut peraturan 6(1) Peraturan-Peraturan Pencegahan dan Pengawalan Penyakit Berjangkit (Langkah-Langkah Di Dalam Kawasan Tempatan Jangkitan) (Pelan Pemulihan Negara) (Fasa Peralihan ke Endemik) 2022 ('Peraturan') dan tiada perbuatan yang menyebabkan gangguan/kacau ganggu/kecederaan. Pada 17 Jun 2022, plaintiff-plaintif, anggota-anggota plaintiff pertama dan beberapa anggota awam berkumpul di tempat letak kereta untuk perhimpunan. Apabila plaintiff-plaintif cuba berarak ke Parlimen, anggota-anggota polis di bawah arahan defendan kedua membentuk rantai manusia dan menghalang semua peserta di tempat letak kereta. Semasa perhimpunan, defendan kedua memaklumkan kepada peserta bahawa mereka tidak dibenarkan berarak kerana syarat-syarat yang dikenakan oleh defendan pertama di bawah s 15 APA. Plaintiff kedua kemudian menghubungi Timbalan Menteri Undang-Undang ('Timbalan Menteri') dan memaklumkan kepadanya bahawa peserta tidak dapat berarak ke Parlimen. Timbalan Menteri tiba lima minit kemudian untuk menerima memorandum plaintiff pertama bagi pihak Perdana Menteri. Selepas penyerahan memorandum, peserta perhimpunan bersurai secara aman. Plaintiff-plaintif memfailkan saman ini dengan mendakwa, antara lain, pelanggaran hak mereka di bawah APA dan Perlembagaan Persekutuan, tort penahanan salah dan salah laku jawatan awam.

Diputuskan:

- (1) Walaupun di bawah APA, tiada permit diperlukan daripada polis untuk mengadakan perhimpunan, dan hanya pemberitahuan sahaja diperlukan, pemberitahuan sedemikian sah jika dan hanya jika ia mematuhi s 10 APA. Seksyen 10(c) mengandungi keperluan agar notis s 9 disertakan dengan salinan kebenaran pemilik atau penghuni tempat perhimpunan. Menurut s 63 Akta Kerajaan Tempatan 1976, DBKL mempunyai kawalan dan penjagaan umum tempat letak kereta dan oleh itu DBKL adalah penghuni tempat letak kereta bagi tujuan s 10(c) APA. Walaupun tempat letak kereta dibuka kepada orang awam, kebenaran daripada DBKL diperlukan kerana: (a) tempat letak kereta itu tidak digunakan untuk tujuan yang ditetapkan sebagai tempat letak kereta tetapi sebagai premis untuk acara yang dianjurkan oleh plaintiff pertama; dan (b) istilah 'perhimpunan' seperti yang ditakrifkan dalam s 3 APA secara khusus merujuk kepada perhimpunan yang disengajakan dan sementara sebilangan orang di 'tempat awam' manakala s 11 mewajibkan kebenaran pemilik atau penghuni tempat perhimpunan untuk diperolehi. Notis s 9(1) mestilah pemberitahuan yang mematuhi keperluan s 10 APA. Oleh itu, defendan pertama tidak silap dalam menangguk notis s 9(1) — yang kekurangan surat kebenaran daripada DBKL — dan meminta daripada plaintiff pertama penyerahan

- A surat kebenaran. Plaintiff-plaintiff mematuhi s 10 APA hanya pada 14 Jun 2022 apabila mereka menyerahkan surat kebenaran DBKL kepada pejabat defendan pertama. Memandangkan surat defendan pertama bertarikh 15 Jun 2022 dikeluarkan kepada plaintiff-plaintiff dalam tempoh tiga hari selepas semua dokumen pemberitahuan s 10 yang berkaitan diserahkan untuk melengkapkan notis s 9(1), tiada kelewatan di pihak defendan pertama dalam mematuhi s 14(1) APA dengan mengeluarkan suratnya pada 15 Jun 2022 (lihat perenggan 45, 47–51 & 53).
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- C (2) Cara Ketua Pengarah Kesihatan ('DGH') mengawal selia aktiviti yang dibenarkan adalah melalui senarai negatif aktiviti yang dilarang dalam prosedur operasi standard ('SOP') mereka yang diterbitkan di laman web Majlis Keselamatan Negara. Selanjutnya, DGH telah mengeluarkan SOP untuk menggugurkan semua senarai negatif aktiviti yang dilarang,
- D yang berkuat kuasa mulai 15 Mei 2022, untuk membenarkan orang ramai berkumpul di luar tanpa pelitup muka. Aktiviti luar perhimpunan dan perarakan yang dirancang oleh plaintiff-plaintiff bukanlah aktiviti yang dilarang pada 17 Jun 2022. Oleh itu, defendan pertama, dalam kapasitinya sebagai OCPD Daerah Polis Dang Wangi, telah bertindak
- E ultra vires dalam mengenakan larangan perarakan dengan bergantung pada peraturan 6(1) Peraturan — seperti yang dinyatakan dalam suratnya bertarikh 15 Jun 2022 yang melarang sepenuhnya perarakan daripada diadakan oleh plaintiff pertama (lihat perenggan 54–55).
- F (3) Tiada bukti mana-mana peserta yang meminta untuk dibenarkan meninggalkan perhimpunan untuk ke tempat lain tetapi telah dihalang berbuat demikian. Para peserta dapat bergerak bebas di dalam tempat letak kereta sementara defendan kedua terus berusaha untuk berunding dengan plaintiff-plaintiff. Selepas plaintiff kedua menyerahkan memorandum kepada Timbalan Menteri yang menyampaikan ucapan memohon maaf kepada para peserta, peserta perhimpunan bersurai dengan aman tanpa sebarang halangan oleh defendan kedua dan/atau bawahannya. Dalam tempoh singkat ketika peserta perhimpunan dihalang oleh polis daripada berarak ke Parlimen sebelum ketibaan Timbalan Menteri, pergerakan mereka hanya terhad sebahagian sahaja.
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- H Sekatan separa kebebasan bergerak bukanlah penahanan dan permohonan plaintiff-plaintiff untuk pengisytiharan penahanan salah ditolak (lihat perenggan 65–67).
- I (4) Pergantungan defendan pertama pada peraturan 6(1) Peraturan adalah disebabkan salah tafsir undang-undang olehnya. Memandangkan defendan pertama mempunyai sedikit masa untuk berunding dengan Jabatan Peguam Negara dalam tempoh masa yang singkat itu, defendan pertama tidak melakukan salah laku jawatan awam dalam mengenakan larangan tersebut dalam suratnya dan/atau dalam menguatkuasakan

larangan tersebut (lihat perenggan 68–69).

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- (5) Plaintiff-plaintiff sebenarnya telah mencapai hampir keseluruhan objektif perhimpunan pada 17 Jun 2022 tanpa perarakan. Oleh itu, secara adil, tiada ganjaran untuk ganti rugi khas. Ganti rugi nominal sebanyak RM1 dianugerahkan kepada plaintiff pertama (lihat perenggan 72 & 74).]

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Cases referred to

Cheow Siong Chin v Menteri Dalam Negeri, Malaysia & Ors [1985] 2 MLJ 95, SC (folld)

Hassan bin Marsom & Ors v Mohd Hady bin Ya'akop [2018] 5 MLJ 141, FC (folld)

C

Shahrudi Abidin v Datuk Wira Abu Seman Yusop Timbalan Menteri Dalam Negeri Kementerian Dalam Negeri Malaysia & Ors [2020] MLJU 2678; [2021] 1 CLJ 52, CA (distd)

Tony Pua Kiam Wee v Government of Malaysia and another appeal [2019] 12 MLJ 1, FC (folld)

D

Legislation referred to

Criminal Procedure Code s 111

Federal Constitution arts 5, 8, 9, 10, 132(1)(d)

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Government Proceedings Act 1956 s 5

Legal Profession Act 1976 s 41

Local Government Act 1976 ss 2, 63

Peaceful Assembly Act 2012 ss 3, 4, 9, 9(1), 10, 10(c), 11, 12(3), 14(1), (2), 15, 16, 25, Fourth Schedule, Form

F

Peaceful Assembly (Amendment Act) 2019

Prevention and Control of Diseases Act 1988

Prevention and Control of Infectious Diseases (Measures Within Infected Local Areas) (National Recovery Plan) (Transition Phase To Endemic Regulations 2022 reg 6, 6(1)

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New Sin Yew (with Lee Yee Woei and Izni Syazwani) (Amerbon) for the plaintiff. Muhammad Al-Saifi Hashim (with Asyraf Abd Hamid) (Attorney General's Chambers) for the defendants.

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Gan Techiong JC:

INTRODUCTION

[1] This civil suit was filed by the plaintiffs pleading, inter alia, violation of their rights under the Peaceful Assembly Act 2012 ('the PAA 2012') and Federal Constitution, tort of false imprisonment and misfeasance in public office.

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A [2] The plaintiffs had organised a peaceful assembly and march to take place on 17 June 2022, which they named: ‘Walk for Judicial Independence’. The cause of their grievances, as pleaded in their statement of claim, is that the first defendant, who was then the officer-in-charge of the Police District of Dang Wangi, had prohibited the plaintiffs, members of the Bar and some members of
B the public, who had assembled at a public carpark known as the Padang Merbok Public Carpark on the said date from marching to Parliament to deliver a memorandum to the then Prime Minister of Malaysia.

C [3] After considering the evidence adduced during trial and submissions of learned counsel for the plaintiffs and learned senior federal counsel for the defendants, I find that the first defendant, in his capacity as the officer-in-charge of the Police District of Dang Wangi had acted ultra vires on 15 June 2022 and also on 17 June 2022. However, I decided that this court ought to issue only one declaration, and not all the declarations sought by the
D plaintiffs.

E [4] While reading out my broad grounds, I have expressed my appreciation to counsel on both sides for their agreeing on the quantum of damages, ie that nominal damages of only RM1 be awarded to the first plaintiff. This spared me from having to assess general damages for such a case — which is not a run-of-the-mill one.

THE PARTIES IN THIS CIVIL SUIT

F [5] The first plaintiff is established under s 41 of the Legal Profession Act 1976 as a body corporate with perpetual succession and a common seal, and with power subject to the said Act to sue and be sued in its corporate name.

G [6] The second plaintiff is an advocate and solicitor of the High Court of Malaya and was, at the material time, the President of the Malaysian Bar.

H [7] The third plaintiff is an advocate and solicitor of the High Court of Malaya and was, at the material time, the Vice President of the Malaysian Bar.

I [8] The fourth plaintiff is an advocate and solicitor of the High Court of Malaya and was, at the material time, the Secretary of the Malaysian Bar.

I [9] The fifth plaintiff is an advocate and solicitor of the High Court of Malaya and was, at the material time, the Treasurer of the Malaysian Bar.

[10] As mentioned at the outset, the first defendant is a senior police officer and was, at the material time, the officer-in-charge of the Police District (‘the OCPD’) of the Dang Wangi Police District in Kuala Lumpur.

[11] The second defendant is a police officer, and was, at the material time, serving at the headquarters of the Dang Wangi Police District, under the command of the first defendant. A

[12] The third defendant (the Royal Malaysian Police) is one of the public services established under art 132(1)(d) of the Federal Constitution ('the Constitution'). B

[13] The fourth defendant is the Inspector-General of Police of Malaysia and may be held vicariously liable for the actions of the first defendant and second defendant in performing their duties as police officers. C

[14] The fifth defendant is the Minister responsible for the third defendant.

[15] The sixth defendant is the Government of Malaysia and is, at all material times the employer of the first defendant to the fifth defendant. Pursuant to s 5 of the Government Proceedings Act 1956 ('the GPA 1956'), the sixth defendant is vicariously liable for the tort or for any wrongful act committed by the first defendant to the fifth defendant. D

THE PLAINTIFFS' NARRATION OF MATERIAL EVENTS E

[16] The *plaintiffs' version* of material events is best summed up in a chronology of events, as follows:

- (a) 27 May 2022 — first plaintiff ('Malaysian Bar') held an Extraordinary General Meeting ('EGM') and passed a resolution to hold a peaceful assembly and march to Parliament with the purpose of objecting to the Malaysia Anti-Corruption Commission ('MACC') publicly disclosing their investigation of a Court of Appeal judge. They named it 'Walk for Judicial Independence Assembly and March' ('WfJI Assembly and March'); F
- (b) 29 May 2022 — the Bar Council scheduled the WfJI Assembly and March to be held on 17 June 2022; G
- (c) 3 June 2022 — staff of the first plaintiff attempted to deliver a notice pursuant to s 9(1) of the PAA 2012 to the first defendant. It was alleged that the officers at the Dang Wangi Police Station under the command of the first defendant refused to accept it on the ground that the plaintiffs did not obtain the consent of Dewan Bandaraya Kuala Lumpur ('DBKL') to use the proposed venue; H
- (d) 7 June 2022 — once again, the staff of the first plaintiff attempted to deliver the notice pursuant to s 9(1) of the PAA 2012 to the first defendant. It was alleged that police officers on duty in the Dang Wangi I

- A** Police Station continued to refuse to accept the notice on the same grounds. The notice was left at a counter in the said police station;
- (e) 10 June 2022 — the first defendant replied to the notification, requesting various consent letters/approvals from DBKL, Director General of Health, Security Council, Parliament Management Department, etcetera. No conditions under s 15 of the PAA 2012 were imposed in this letter;
- B**
- (f) 14 June 2022 — the first defendant had a meeting with the first plaintiff's representatives; verbally informed them that their proposed assembly at Padang Merbok Carpark was allowed, but they would be prohibited from marching to Parliament. The first defendant was willing to allow only ten individuals to march to Parliament;
- C**
- (g) 15 June 2022 — the first defendant prepared a letter dated 15 June 2022 addressed to the plaintiffs;
- D**
- (h) 16 June 2022 — the first plaintiff received the first defendant's said letter dated 15 June 2022, formally imposing conditions: no procession permitted per reg 6(1) of the Regulations, no acts causing nuisance/annoyance/injury.
- E** Note: The plaintiffs highlighted to this court that the first defendant's said letter dated 15 June 2022 was received less than 24 hours prior to the WfJI Assembly and March scheduled to be held on 17 June 2022;
- (i) 17 June 2022 (9am-10am) — the plaintiffs, members of the first plaintiff and some members of the public started to gather at the Padang Merbok Carpark for the WfJI Assembly. Plastic barriers were seen to have been placed around the premises;
- F**
- (j) 17 June 2022 (10am-10.35am) — a few hundred people ('the participants') have assembled at the Padang Merbok Carpark. Several Bar Council members gave speeches on a temporary stage that was set up there;
- G**
- (k) 17 June 2022 (at around 10.35am) — the plaintiffs attempted to march to Parliament whereupon policemen under the command of the second defendant formed a human chain and blocked all the participants in the Padang Merbok Carpark from marching to Parliament;
- H**
- (l) 17 June 2022 (during the assembly) — the second defendant informed the participants they were not allowed to march due to conditions imposed by first defendant under s 15 of the PAA 2012. Negotiations ensued, and the second defendant initially offered to allow only ten of the participants to march to Parliament, then 20, and finally 30 of the participants. The plaintiffs insisted on all the participants being allowed to march to Parliament but the police personnel under the command of the second defendant continued to refuse to clear the path;
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- (m) 17 June 2022 (about 11am) — the second plaintiff called the Deputy Minister of Law, YB Mas Ermieyati on her handphone and informed her that the participants were unable to march to Parliament; A
- (n) 17 June 2022 (about 11.05am) — the Deputy Minister of Law, YB Mas Ermieyati arrived at Padang Merbok Carpark to receive the first plaintiff's memorandum on behalf of the Prime Minister; B
- (o) 17 June 2022 (around 11.15am) — after the second plaintiff handed the said memorandum to the Deputy Minister who gave a speech apologising to the participants, the participants of the assembly dispersed peacefully; C
- (p) 17 June 2022 (afternoon) — the first defendant issued a press statement about having detected and investigating the assembly, and warning the public;
- (q) 24 June 2022 — the second defendant asked the second plaintiff, Chan Weng Keng, and Rajendran Samuel Devaraj to go to the Dang Wangi Police Station for investigation purposes; D
- (r) 19 September 2022 — the second plaintiff, fourth plaintiff, Chan Weng Keng, and Rajendran Samuel Devaraj filed a judicial review application (WA-25-503-09 of 2022) to challenge the validity of notices that were issued to them under s 111 of the Criminal Procedure Code; E
- (s) 26 September 2022 — the first defendant issued a letter stating 'NFA' (No further action) for the case against those four individuals; and F
- (t) 13 October 2022 — the said judicial review application was withdrawn as it had been rendered academic by the first defendant issuing the 'NFA' letter. G

SUMMARY OF THE PLAINTIFFS' EVIDENCE AND SUBMISSIONS G

[17] The second, third, fourth and fifth plaintiffs all testified as witnesses for the first plaintiff and for themselves respectively, narrated the events that transpired, as stated in their version of the chronology of events set out in para 16 above. H

[18] Learned counsel for the plaintiffs submitted that premised on those facts, the main issues for this court to decide are as follows:

- (a) whether the defendants had acted in breach of the PAA 2012? I
- (b) if indeed the defendants had acted in breach of the PAA 2012, whether the defendants' actions:
 - (i) in preventing the plaintiffs from marching to Parliament amounted to false imprisonment?

- A (ii) amounted to misfeasance in public office? and
(iii) violated the plaintiffs' constitutional rights?

B [19] It was further submitted for the plaintiffs that the first defendant was out of time in imposing the conditions under s 15 of the PAA 2012. On this point, it was contended as follows: that s 14(1) of the PAA 2012 requires the first defendant to respond to the notice under s 9(1) of the PAA 2012 within three days of receipt of the notice and shall, in the response, inform the organiser of the restrictions and conditions imposed under s 15 of the PAA 2012, if any. In the present case, the first defendant received the notice on 7 June 2022, if not, by the earlier date of 3 June 2022. However, the first defendant only imposed conditions under s 15 of the PAA 2012 on 16 June 2022 through its letter dated 15 June 2022 (received on 16 June 2022) to the first plaintiff, less than 24 hours before the assembly on 17 June 2024.

D [20] According to the plaintiffs' learned counsel, the consequence of not imposing conditions in time is found at s 14(2) of the PAA 2012 which states that 'If the Officer in charge of the Police District does not respond to the notification in accordance with subsection (1), the assembly shall proceed as proposed in the notification', and as such, the first defendant had no power to impose any conditions. The plaintiffs thereby contend that the conditions imposed were unlawful and the defendants had acted unlawfully in preventing the plaintiffs from marching on 17 June 2022, and lastly, by imposing conditions less than 24 hours before the assembly, the first defendant had essentially deprived the plaintiffs of any avenue of appeal to the Minister under s 16 of the PAA 2012;

G [21] As his further and alternative submissions, learned counsel for the plaintiffs submitted that irrespective of what had transpired leading to the imposition of conditions, the first defendant had imposed an illegal condition in prohibiting the march from Padang Merbok Carpark to Parliament. On this point, it was contended as follows: that the PAA 2012 had been amended by Parliament in 2019 to remove the prohibition on street protest. For all intents and purposes, the plaintiffs' march to Parliament is a moving assembly under the current definition of an 'assembly' or a 'street protest' under the pre-amendment definition of the same. Any conditions imposed by the OCPD under s 15 of the PAA 2012 cannot amount to a prohibition of street protest, which had been permitted by Parliament. The defendants' reliance on reg 6 of the Prevention and Control of Infectious Diseases (Measures Within Infected Local Areas) (National Recovery Plan) (Transition Phase To Endemic) Regulations 2022 ('the Regulations') for the prohibition of the march was unlawful. The plaintiffs argue that the first defendant could not rely on reg 6 of the Regulations to prohibit a street protest when Parliament had allowed it, that the Regulations, being a subsidiary legislation, cannot override the PAA

2012, being a primary legislation and go beyond the scope of its parent legislation, ie the Prevention and Control of Diseases Act 1988 ('the PCIDA'), which governs public health and not assemblies which is governed by the PAA, and therefore a harmonious reading of the PAA 2012, the Regulations, and the Prevention and Control of Infectious Diseases Act 1988 ('the PCIDA') would mean that reg 6 of the Regulations cannot be used to negate the rights of the plaintiffs under the PAA 2012.

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[22] Learned counsel further argues that as the term used in the Regulations is 'procession' which is different from the term used in the PAA 2012, which is 'street protest', such distinction is crucial because when Parliament uses different words, it intends to mean different things. 'Procession' under the Regulations cannot be interpreted to include a moving assembly or 'street protest' under the PAA. It was therefore emphasised on behalf of the plaintiffs that it was unlawful for the first defendant to rely on reg 6 to prohibit the proposed march.

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[23] On the issue about using the Padang Merbok Public Carpark for the assembly, learned counsel for the plaintiff cited ss 2 and 63 of the Local Government Act 1976 and submitted that Padang Merbok is a public place and therefore no permission was required from Dewan Bandaraya Kuala Lumpur for the assembly to be held there.

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[24] The plaintiffs' learned counsel went on to rely on the judgment of the the Federal Court in *Tony Pua Kiam Wee v Government of Malaysia and another appeal* [2019] 12 MLJ 1 to submit that the first defendant has also committed the tort of misfeasance in public office. It was submitted that as the first defendant is a public officer, all the key ingredients of the tort are present in the present case, which are: an abuse of public power or authority by a public officer who was recklessly indifferent as to the limits of his public power or authority, and who acted with reckless indifference to the probability of harming the plaintiff or a class of persons of which the plaintiff was one. According to counsel, the first defendant had abused his power by prohibiting the plaintiffs' march when he had no power to do so under the PAA.

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[25] Further, it was submitted that the first defendant's prohibition of the plaintiffs' march was unlawful as the defendants had no basis to restrain or block the plaintiffs from marching to Parliament, and therefore such restraint or blockade by the defendants amounted to false imprisonment. Learned counsel cited *Shahrudi Abidin v Datuk Wira Abu Seman Yusop Timbalan Menteri Dalam Negeri Kementerian Dalam Negeri Malaysia & Ors* [2020] MLJU 2678; [2021] 1 CLJ 52 and *Hassan bin Marsom & Ors v Mohd Hady bin Ya'akop* [2018] 5 MLJ 141 as authorities in support of his contention of false imprisonment.

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A [26] Reference was also made by the plaintiffs' learned counsel to arts 5 (life), 8 (equal protection of the law), 9 (freedom of movement), and 10 (freedom of assembly) of the Federal Constitution to submit that the defendants' alleged breach of the PAA 2012 amount to a violation of the plaintiffs' constitutional rights.

B [27] In the prayers in their lengthy statement of claim, the plaintiffs sought various declarations of rights, general damages, aggravated damages and exemplary damages.

C SUMMARY OF THE DEFENDANTS' EVIDENCE AND SUBMISSIONS

[28] Learned senior federal counsel ('SFC') who appeared for the defendants submitted as follows:

D (a) the prohibition of procession and attempts to stop the move to march to Parliament did not constitute false imprisonment;

(b) the conditions imposed by the police were lawful and did not constitute misfeasance in public office; and

E (c) there was no breach of constitutional rights.

F [29] The learned SFC went on to submit that there were attempts by the police to negotiate with the plaintiffs, and that upon discussion, the number of participants who were allowed to march to Parliament were increased from ten to 20 and finally to 30, but the police's offers enabling them to march to Parliament 'were never taken by the plaintiffs. This evidence appears unchallenged throughout the trial'.

G [30] In seeking to exclude other participants from the benefit of this action, learned SFC submitted that this civil suit is not a class action by all the participants of the assembly, and the question of whether there were any breaches of constitutional rights should be limited to only the constitutional rights of the second, third, fourth and fifth defendants.

H [31] it was further contended for the defendants that it was mandatory to obtain the consent of DBKL because s 63 of the Local Government Act 1976 clearly stipulates that the DBKL has the general control and care of the said public place. Learned SFC pointed out that since the facts of the instant case showed that the plaintiffs intended to organise an assembly to be attended by approximately 500 persons with speeches to be delivered, it would be absurd to say that in such a situation, consent of the DBKL was not required.

I [32] By way of illustration, the learned SFC posed a hypothetical question

on whether members of the public may freely organise wedding ceremonies or sports carnival at the Padang Merbok Carpark without the consent of DBKL? He concluded on this point by submitting that DBKL's role in having the general control and care of the said carpark 'entitle them to fall within the ambit of the definition of owner or occupier of Padang Merbok' Carpark.

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[33] The learned SFC highlighted the fact that at the time when the said notification was served at the Dang Wangi Police Station, the plaintiffs had yet to obtain the consent of the owner/occupier of Padang Merbok Carpark. The first plaintiff obtained approval vide a letter from DBKL only on 14 June 2022 and paid a sum of RM400 to DBKL, as the rental required to use Padang Merbok Carpark, only after receiving the approval letter. On the law on this point, the learned SFC submitted that s 9 of the PAA 2012 ought to be read together with s 10 which mandates the notification to fulfil certain the prescribed criteria, including proof of consent of the owner or occupier of the place of assembly.

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[34] The point on law on false imprisonment was dealt with by the learned SFC who submitted that the authorities cited by learned counsel for the plaintiffs, for eg *Shahrudi Abidin*, involve 'actual arrest and detention', unlike the facts of the present case. Several English cases were cited in support of his submission that the law on tort of false imprisonment 'requires the constraint to be total or complete in restricting a person to a particular place'.

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[35] As for the law on tort of misfeasance in public office, it was submitted that the elements of that tort were not proven in this case. *Tony Pua Kiam Wee v Government of Malaysia* was cited by the learned SFC as authority in support of the second defendant's evidence, who testified as follows:

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Plaintif-Plaintif dan kesemua peserta perhimpunan yang lain tidak pernah dihalang daripada meninggalkan tempat perhimpunan tersebut. *Plaintif-Plaintif tidak dikepung dan bebas keluar masuk tempat letak kereta Padang Merbok. Mereka hanya dihalang dari berarak ke bangunan Parlimen.* Jadi, dakwaan 'penahanan salah tersebut' merupakan suatu tanggapan yang salah.

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ANALYSIS OF THE FACTS AND LAW

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[36] As alluded to above, this civil suit was filed by the plaintiffs who pleaded, inter alia, violation of their rights under the PAA 2012 and Federal Constitution, tort of false imprisonment and misfeasance in public office because the first defendant, who was the Officer in Charge of the Police District ('OCPD') of Dang Wangi, had imposed a condition that prohibited the plaintiffs, members of the Bar and some members of the public, who had assembled at the Padang Merbok Public Carpark, from marching to Parliament on 17 June 2022 to deliver a memorandum to the Prime Minister of Malaysia.

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- A [37] Section 3 of the PAA 2012 used to contain a definition of ‘street protest’ while s 4 expressly stated that the right to organise an assembly under the said Act does not extend to a street protest. I had used words that are in the past tense because an Amendment Act A1600, which came into force on first November 2019, had deleted ‘street protest’ from ss 3 and 4 of the Peaceful Assembly Act 2012.
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[38] The deleted definition of ‘street protest’ reads:

- C ‘Street protest’ means an open air assembly which begins with a meeting at a specified place and consists of walking in a mass march or rally for the purpose of objecting to or advancing a particular cause or causes’

- D [39] As a matter of fact, the deleted definition of ‘street protest’ is the most appropriate description of the event planned by the plaintiffs, which was to be held on 17 June 2022, beginning with an assembly at Padang Merbok Public Carpark and thereafter to march to Parliament to submit a memorandum to the Prime Minister.

- E [40] Despite the amendments made by the said Amendment Act, it must be noted that s 3 of the PAA 2012 defines the word ‘assembly’ as an assembly of a number of persons *in a public place*, whether or not the assembly is at a particular place or moving, ie with the participants moving together from one place to another, which would cover street protests.

- F THE UNDISPUTED FACTS OF THE CASE IN CHRONOLOGICAL ORDER

- G [41] On 27 May 2022, the first plaintiff had passed a resolution to hold a peaceful assembly and march to Parliament to express the objection of the members of the first plaintiff against the action of the MACC in publicly announcing that an investigation was being carried out on a judge of the Court of Appeal of Malaysia.

- H [42] As the area in which the proposed assembly and march is within the Dang Wangi Police District, on 3 June 2022, the first plaintiff’s letter together with a notification under s 9(1) in a form following the format set out in the Fourth Schedule of the said Act, were sent by hand to the Dang Wang Police Station by an employee of the first plaintiff. There is a dispute about what occurred at the police station on 3 June 2022. From the evidence, it appeared to be a situation of either a lack of any standard operating procedure (‘SOP’) to guide the police personnel manning the counters in the police station on how to deal with letters and notices delivered by hand by members of the public or a situation of counter personnel being unfamiliar with the police station’s existing SOP. A second attempt made on 7 June 2022, which is undisputed,
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resulted in the first plaintiff's s 9(1) notification being served by leaving it at the police station.

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[43] Now, s 14(1) of the Act requires the OCPD to respond within three days of his receipt of a s 9(1) notification. In this case, the first defendant, in his capacity as the OCPD of Dang Wang, did respond with his letter dated 10 June 2022 within three days from 7 June 2022. In his letter, the OCPD referred to s 10(c) of the PAA 2012 that makes it mandatory for the s 9(1) notification to be accompanied by a consent letter from the owner or occupier of the place of assembly, ie where the assembly is to take place.

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[44] I note that s 11 of the PAA 2012 states as follows:

The organiser of an assembly, other than a religious assembly or a funeral procession or an assembly held at a designated place of assembly, shall obtain the consent of the owner or occupier of the place of assembly for it to be used for the purpose of the assembly.

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[45] Even though under the PAA 2012, no permit is required from the police for an assembly to be held, and only a notification is required to be given, in my view, such notification would be valid if and only if it complies with s 10 of the said Act. Section 10(c) contains a requirement for the s 9 notification to be accompanied by a copy of the consent of the owner or occupier of the place of assembly. Learned counsel on both sides have differing views as to whether the consent of DBKL was required to use the Padang Merbok Public Carpark for the assembly planned by the plaintiffs.

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[46] The facts show that the plaintiffs intended to organise an assembly to be attended by approximately 500 persons with speeches to be delivered. It was not a small event to be attended by a handful of people. I am of the view that the learned SFC had effectively used an appropriate illustration to rebut the submission of learned counsel for the plaintiffs that no permission is required from DBKL. He envisaged a scenario of members of the public freely organising wedding ceremonies and sports carnivals at the Padang Merbok Carpark without the consent of DBKL and causing chaos to ensue.

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[47] This court may not turn a blind eye to the fact that pursuant to s 63 of the Local Government Act 1976, DBKL has the general control and care of the Padang Merbok Public Carpark. Even though the Padang Merbok Public Carpark is a carpark open to the public, it is a place that requires maintenance and supervision. Section 63 states:

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A local authority shall have the *general control and care* of all places within the local authority area which have been or shall be at any time set apart and vested in the local authority for the use of the public or to which the public shall at any time have or have acquired a common right.

A [48] Since DBKL has a statutory duty to control and care for the Padang Merbok Carpark, it could be held liable for any accidents within that public carpark which are caused by their negligence (if any) in upkeeping it. Therefore, I agree with the learned SFC that DBKL is, for all intents and purpose, the occupier of Padang Merbok Carpark for the purpose of s 10(c) of the PAA 2012.

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C [49] I am of the view that even though the Padang Merbok Carpark is a carpark open to the public, consent from DBKL was required due to two reasons. First, the plaintiffs had planned to use it as a meeting place and to set up a stage there for them to deliver speeches. In other words, the Padang Merbok Carpark was not to be used for its designated purpose as a carpark but as premises for an event organised by the first plaintiff. Thus, I have to agree with submissions by the learned SFC that if no permission is required from the occupier cum legal guardian of the public carpark, it would mean that it would be open — free of charge — to members of the public to hold private events there as and when they please, including wedding functions, sports carnivals and concerts.

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E [50] The second reason for my ruling that the consent of DBKL is required is because the term ‘assembly’ as defined in s 3 of the PAA 2012 specifically refers to an intentional and temporary assembly of a number of persons in a ‘public place’ while s 11 makes it mandatory for the consent of the owner or occupier of the place of assembly to be obtained. Consent is unrequired if and only if it is a religious assembly or a funeral procession or an assembly held at a place gazetted by the Minister as a ‘designated place of assembly’ under s 25 of the PAA 2012. Since Padang Merbok Carpark is not a *gazetted* designated place of assembly, it was mandatory for the plaintiffs, who had planned to use the Padang Merbok Carpark for an assembly, to apply for DBKL’s consent to fulfil the requirement of s 11 of the PAA 2012.

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H [51] In my judgment, a s 9(1) notification must be a notification that complies with the requirements of s 10 of the PAA 2012. Thus, the OCPD (first defendant in this case) did not err in holding on to the s 9(1) notification — which was short of a consent letter from DBKL — and sending his letter on 10 June 2022 to the first plaintiff to request the submission of a consent letter.

I [52] It is undisputed that the plaintiffs did subsequently obtain a consent letter from DBKL and forwarded it to the first defendant on 14 June 2022. Upon receipt of this letter, the first defendant called a meeting with the plaintiffs, which was held at the Dang Wangi Police Station on 15 June 2022. Suffice to say that there was no amicable agreement between the parties as to how the assembly and march scheduled on 17 June were to be conducted.

[53] In this case, the plaintiffs complied with s 10 of the PAA 2012 only on 14 June 2022 when they submitted DBKL's consent letter to the office of the first defendant. Since the first defendant's letter dated 15 June 2022 was issued to the plaintiffs within three days of all relevant s 10 notification documents being submitted to make the s 9(1) notification complete, I find that there was no delay on the part of the first defendant in complying with s 14(1) of the Peaceful Assembly Act 2012 by issuing his letter on 15 June 2022. For reference, the relevant part of s 10(c) is set out below:

The notification made under subsection 9(1) shall —

- (a) be in the form in the Fourth schedule;
- (b) be signed by the organizer;
- (c) *be accompanied by a copy of the consent of the owner or occupier of the place of assembly, if applicable;*

[54] Next, I move on to consider the restrictions and conditions imposed in the OCPD's letter dated 15 June 2022. I agree with submissions by learned counsel for the plaintiffs that in June 2022, the manner in which the Director-General of Health regulated permitted activities was through a negative list of prohibited activities in their SOP published on the website of the Majlis Keselamatan Negara ('MKN'). Further, on first April 2022, the Director General of Health had issued a SOP to drop all the negative list of prohibited activities, which took effect from 15 May 2022, to allow the public to gather outdoors without facemasks. If an activity is not contained in the negative list, such activity is deemed permitted without any prior approval. The outdoor activities of the assembly and march planned by the plaintiffs were *not* activities prohibited as at 17 June 2022.

[55] Therefore, it is the finding of this court that the first defendant, in his capacity as the OCPD of Dang Wangi Police District, had *acted ultra vires in imposing a prohibition of the march* by relying on reg 6(1) of the Prevention and Control of Infectious Diseases (Measures Within Infected Local Areas) (National Recovery Plan) (Transition Phase To Endemic) Regulations 2022 — as stated in his letter of 15 June 2022 absolutely prohibiting a march from being held by the first plaintiff.

[56] I find that the evidence adduced in this case proved that the assembly was allowed to take place on 17 June 2022, a temporary stage was set up, and speeches were delivered. The further issues in dispute relate to the conduct of the first defendant and his subordinates on that day in enforcing the conditions imposed in the first defendant's letter dated 15 June 2022 to prevent the participants of the assembly from marching to Parliament on 17 June 2022.

A [57] The defendants' evidence was that the plastic barriers at the said carpark were left there by some contractors who carried on works in the vicinity, and the police and the participants of the assembly were separated by the plastic barriers. Regardless of who placed those plastic barriers there, the undisputed facts are that there was no physical contact between the police and the participants at the assembly, and no arrest was made by the police.

C [58] The first defendant testified that he was not physically present at the assembly on 17 June 2022 but was constantly in touch with the second defendant who was the commanding officer present at the site of the assembly. They take the stand that the participants were prohibited only from marching to Parliament but were not restrained from leaving the Padang Merbok Carpark.

D [59] There was no evidence adduced by the plaintiffs as to whether the participants would have been allowed to leave the Padang Merbok Carpark if he or she had decided to leave the assembly for the purpose of going elsewhere and not to march to Parliament.

E [60] The evidence of the second plaintiff (the President of the Bar at the material time) under cross-examination confirmed that it was not a case of the second defendant and his subordinates using force to confine the participants to a corner of the Padang Merbok Carpark. The evidence of witnesses from both sides confirmed that there were indeed dialogues being held, whereby the second defendant was trying to dissuade all the participants from marching to Parliament by offering to allow, initially just ten of the participants, then 20, and finally 30 of them to march to Parliament. The following screenshots of the notes of evidence are relevant:

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H *(the remainder of this page is intentionally left blank)*

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ALS Alright. Then what happened when police refused you from marching to Parliament?

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KAREN There was a discussion between us and the police and –

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ALS Ok, what is the negotiation then? What?

KAREN Of course we wanted to, we requested that they open up the exit and remove the barricade so that we can walk to the Parliament and they said no. And then when we tried to reason with them and explain to them about the fact that we had given the notice and that we had already complied with the provisions of the Peaceful Assembly Act and that this is a right that they should not stop us from exercising, but they did not budge. And then later on they tried to negotiate with us saying that they will only allow 10 of us to walk out and we said that that would not be acceptable because there is nothing in the Peaceful Assembly Act that limits the number of people from gathering and doing a procession. And we had members coming from near and far including from other states and they had wanted to walk.

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[61] The evidence of the plaintiffs was that in response to the second defendant's 'offer' to allow up to 30 of the participants to Parliament, all the participants spoke with one voice, steadfast in adhering to their plans afoot, to march to Parliament on foot. The sentiments of the participants could be verbalised as: 'We ain't going home before we march to Parliament'. This could be gleaned from the oral evidence of the second plaintiff, as shown in the following screenshots of the notes of evidence:

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A **KAREN** Yes, they said that we cannot leave that area to go to Parliament.

B **ALS** To go to Parliament. If you had wanted to go elsewhere, not Parliament,
can you go out easily?

C **KAREN** I don't think that we had asked to go anywhere else. We just wanted to
go to Parliament. That was the, because that was the agenda for the
walk.

D [62] On the law applicable to the plaintiffs' allegation of false imprisonment,
I find guidance in the judgment of the Federal Court in *Hassan bin Marsom
& Ors v Mohd Hady bin Ya'akop* which held as follows:

E [130] False imprisonment may be defined as an act of the defendant which directly
and intentionally or negligently causes the confinement of the plaintiff within an
area delimited by the defendant' (*The Law of Torts* by Harry Street (7th Ed) at p 23;
see also *The Law of Torts in Singapore* by Gary Chan Kok Yew and Lee Pey Woan
(second Ed) at 02.036). '... *partial restriction of freedom* of movement is not an
imprisonment' (*Cheow Siong Chin v Menteri Dalam Negeri, Malaysia & Ors* [1985]
2 MLJ 95 per Abdooldader SCJ, delivering the judgment of the court). '*False
imprisonment is any total restraint of the liberty of the person, for however short a time,
by the use or threat of force or by confinement, without lawful cause*'.

F [63] The definition and scope of 'false imprisonment' are also discussed in
the Supreme Court judgment of *Cheow Siong Chin v Menteri Dalam Negeri,
Malaysia & Ors* [1985] 2 MLJ 95 — which was approved by the Federal Court
in *Hassan bin Marsom & Ors v Mohd Hady bin Ya'akop*. Abdooldader SCJ
G writing for the Supreme Court held:

H The reasoning in the cases we have referred to would appear to be directly in line
with that in *Bird v Jones* (1845) 7 QB 742; 115 ER 668, a false imprisonment
action in which it was held that *partial restriction of freedom of movement is not an
imprisonment*, where Lord Coleridge, CJ, said (at p 744):

I And I am of the opinion that there was no imprisonment. To call it so appears to
me to confound partial obstruction and disturbance with total obstruction and
detention. A prison may have its boundary large or narrow, visible and tangible,
or though real, still in the conception only; it may itself be moveable or fixed: but
a boundary it must have; and that boundary the party imprisoned must be
prevented from passing; he must be prevented from leaving that place, within the
ambit of which the party imprisoning would confine him, except by
prison-breach. Some confusion seems to me to arise from confounding
imprisonment of the body with mere loss of freedom: it is one part of the
definition of freedom to be able to go whithersoever one pleases; but

imprisonment is something more than the mere loss of this power; it includes the notion of restraint within some limits defined by a will or power exterior to our own.

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[64] The point of law of relevance from the two authorities cited above is that the Federal Court in *Hassan bin Marsom & Ors v Mohd Hady bin Ya'akop* agrees with the judgment of Abdoolcader SCJ in *Cheow Siong Chin v Menteri Dalam Negeri, Malaysia & Ors* that partial restriction of freedom of movement is not an imprisonment, and that there must be total restraint of liberty of the complainant.

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[65] Factually, as pointed out earlier above, *there was no evidence* of any of the participants requesting to be allowed to leave the assembly to go elsewhere but was restrained from doing so. The plaintiffs admitted that there was no physical contact between the police and the participants at the assembly, and no arrest was made by the police. There is not a single one of the participants who could testify of having being cornered by a few police officers at a particular place within the said carpark, so as to have been temporarily imprisoned. the participants were able to move about freely within the Padang Merbok Carpark while the second defendant was continuing his efforts to negotiate with the plaintiffs.

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[66] As the chronology of events shows, the plaintiffs' speeches ended around 10.35am, and the Deputy Minister (as the representative of the Prime Minister) turned up at the Padang Merbok Public Carpark by 11.05am, ie within approximately 30 minutes to receive the memorandum from the plaintiffs. After the second plaintiff handed the said memorandum to the Deputy Minister who gave a speech apologising to the participants, the participants of the assembly dispersed peacefully without any hindrance by the second defendant and/or his subordinates.

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[67] I find that during the short period when the participants of the assembly were blocked by the police from marching to Parliament before the arrival of the Deputy Minister, their movement was only partially restricted. Thus, I am bound to apply *Hassan bin Marsom & Ors v Mohd Hady bin Ya'akop* and *Cheow Siong Chin v Menteri Dalam Negeri, Malaysia & Ors* which held that partial restriction of freedom of movement is not imprisonment, and to dismiss the plaintiffs' prayer for a declaration of false imprisonment.

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[68] Next, on the plaintiffs' plea on tort of misfeasance in public office, the judgment of the Federal Court in *Tony Pua Kiam Wee v Government of Malaysia and another appeal* [2019] 12 MLJ 1 is binding on this court. Tort of misfeasance in public office would be established if there is 'abuse of public power or authority by a public officer who was recklessly indifferent as to the

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- A limits of his public power or authority, *and* who acted with reckless indifference to the probability of harming the plaintiff'. Now, the first defendant, being an officer of one of the public services established under art 132(1)(d) of the Constitution, is no doubt a public officer. He did make a decision on 15 June 2022 to prohibit a march to Parliament. However, his reliance on reg 6(1) of the Prevention and Control of Infectious Diseases (Measures Within Infected Local Areas) (National Recovery Plan) (Transition Phase To Endemic) Regulations 2022 was due to his misinterpretation of the law. Is the first defendant's said decision — which was due to his misinterpretation of the law — an abuse of public power or reckless indifference that meets the threshold of the tort as defined in *Tony Pua Kiam Wee*?
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- [69] It is noteworthy that the plaintiffs complied with s 10 of the PAA 2012 only on 14 June 2022 when they submitted DBKL's consent letter to the office of the first defendant. The first defendant did respond expeditiously by issuing his letter on 15 June 2022 — which contains an ultra vires condition prohibiting the march proposed by the plaintiffs. Given that the first defendant had little time to consult the Attorney-General Chambers within that short span of time then, I would hold, on a balance of probabilities, that the first defendant did *not* commit any misfeasance in public office in imposing that prohibition in his letter the next day, ie on 15 June 2022 and/or in enforcing the prohibition on 17 June 2022.
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CONCLUSION

- F [70] Under s 15 of the PAA 2012, the OCPD can impose conditions but not a total prohibition that defeats the purpose of the amendments made to the said Act by Act 1600. The amendments had, inter alia, deleted the prohibition against street protest. Street protests are to be allowed subject to reasonable conditions being imposed.
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- [71] Even though s 12(3) of the PAA 2012 requires the first defendant (as the OCPD) to take into account the concerns and objections received from people who has interests, ie the occupants of neighbouring premises, he should have imposed restrictions and conditions instead of a total prohibition of the march. As an example, the OCPD could have imposed a condition that the participants march in two rows on the public road to Parliament or such other conditions that ensure the safety of the participants as well as to avoid any nuisance to the people with interest. The first defendant should have facilitated the march by controlling traffic to Parliament and ensuring the safety of the participants. Thus, the first defendant, as OCPD of Dang Wangi, had obviously acted ultra vires in absolutely prohibiting the march.
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- [72] Since the plaintiffs were allowed to hold the assembly on 17 June 2022

at the Padang Merbok Public Carpark, to deliver speeches there and to deliver the memorandum to the representative of the Prime Minister at the said venue, I find that the plaintiffs had in fact achieved almost the whole objective of the assembly on 17 June 2022 sans the march. Therefore, in fairness, there should be no award for special damages because those expenses claimed by the plaintiffs as special damages had served their purpose at the assembly.

[73] In view of the finding of facts and law that I have made, I am of the view that a declaration ought to be issued by this court to declare that the first defendant had, in his capacity as the Officer in Charge of the Dang Wang Police District, acted ultra vires on 15 June 2022 in using s 15 of the Peaceful Assembly Act 2012 to impose a condition absolutely prohibiting an assembly to be organised by the first plaintiff *from marching to Parliament on 17 June 2022*, and acted ultra vires on 17 June 2022 in taking action to prevent the march. This declaration is issued pursuant to the prayer in para 60.14 of the statement of claim for such other relief deem appropriate and just by this honourable court.

[74] I do hereby repeat that I am grateful to counsel on both sides for agreeing that nominal damages of RM1 be awarded to the first plaintiff. By reason of my findings that I have explained above, the other prayers in the statement of claim are dismissed. Lastly, since this is a public interest case, and the plaintiffs have succeeded only in part, each party is to bear own costs.

Order accordingly.

Reported by Nabilah Syahida Abdullah Salleh

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